IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

Bail Appl..No. 3770 of 2007()

CRIME NO.172/06 OF THE WADAKKANCHERY POLICE STATION

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PETITIONER/3RD ACCUSED:

PRATHEESH, AGED 24 YEARS,
S/O.PRABHAKARAN, ANGADIPARAMBIL HOUSE,
P.O.THAIKKATTUSSERY, THRISSUR DIST.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENTS:

THE SUB INSPECTOR OF POLICE
WADAKKANCHERY, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO.3770 OF 2007

Dated this the 25th day of June, 2007

ORDER

The petitioner is the 3rd accused and he faces allegations in a crime registered under Sec.394 of the IPC. The alleged incident took place on 21/4/06 at about 8.15 p.m. First Information Statement was lodged only 23/4/07. The crux of the allegations is that when the marriage of the de facto complainant was fixed with a girl, who allegedly was in love earlier with the 1st accused, accused 1 to 4 entered into a conspiracy and engaged accused 5 to 8 to attack the de facto complainant and deter him from getting married on 23/4/07. The de facto complainant did not suffer any injuries. His motorcycle was allegedly taken away by force. He did not lodge a complaint immediately after the incident. He lodged a complaint only after the marriage was performed. No person is named as accused in the F.I.R. Investigation led to

the ascertainment that accused 5 to 8 had actually committed the offence. Further probe revealed that accused No.5 was engaged by accused No.1 and the petitioner acted as a go between the 1st accused and the 5th accused. The allegation is that accused 1 to 4 had conspired and had engaged accused 5 to 8 to perpetrate the crime. Investigation is in progress. The petitioner has been not arrested so far. The petitioner now apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. False allegations are being raised against him. It is, in these circumstances, prayed that directions under Sec.438 of the Cr.P.C. may be issued in favour of the petitioner.

3. The learned Public Prosecutor opposes the application vehemently. The learned Public Prosecutor submits that there are no circumstances justifying the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. Except that the allegations are false, there is no semblance of a suggestion raised to indicate that the powers of arrest are about to be used with ulterior and mala fide motive against the petitioner.

4. Having considered all the relevant inputs, I am satisfied that there are no circumstances justifying the invocation of the discretion under Sec.438 of the Cr.P.C. This is certainly a fit case where the petitioner must surrender before the Investigators or the learned Magistrate having jurisdiction. He must co-operate with the Investigators. It is not necessary to permit the petitioner to arm himself with an order of anticipatory bail before he surrenders before the Investigating Officers or the learned Magistrate. No circumstances which can persuade this Court to invoke such extraordinary equitable jurisdiction are shown to exist.

5. In the result, this petition is dismissed. However, I may hasten to observe that if the petitioner surrenders before the Investigating Officers or the learned Magistrate having jurisdiction and applies for bail, after giving sufficient prior notice to the learned Public Prosecutor, the learned Magistrate shall, needless to say, proceed to dispose of the application on merits and as expeditiously as possible.

Sd/-

(R. BASANT, JUDGE)

Nan/ //true copy// P.S. To Judge